HONOURABLE SRI G.S.SINGHVI

THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE

C.Y.SOMAYAJULU

–

WRIT APPEAL No. 2443 OF 2005

Between:

Pidugu Madhu S/o Venkateswarlu

aged about 31 years, R/o Managallu village

Buchireddypalem Mandal, Nellore District.

… Appellant

And

The Deputy Registrar of Co-operative Societies,

Kavali and the Divisional Cooperative Officer,

Kavali, Nellore District and others.

… Respondents.

::JUDGMENT::

Counsel for appellant : Sri P.Sridhar Reddy

Counsel for Respondents 1 to 3 : Sri E.Seshagiri Rao

Government Pleader for

Cooperation.

Counsel for Respondent No.4 : Sri P.Lingeshwar Rao

16th December, 2005

Per G.S.Singhvi, C.J.

Feeling aggrieved by the partial acceptance of the writ petition filed by him challenging order dated 9.11.2005 passed by Deputy Registrar of Cooperative Societies, Kavali and Divisional Officer, Kavali, Nellore District, the appellant has filed this appeal under Clause 15 of the Letters Patent.

It appears from the record that the nomination filed by the appellant for election to the office of Director from the 10th segment of Vavveru Cooperative Rural Bank Limited, Buchireddypalem, which is a primary cooperative society registered under the Andhra Pradesh Cooperative Societies Act was questioned by respondent No.4 on the ground that the former was not eligible to contest the election. The Election Officer overruled the objection of respondent No.4, but the election scheduled to be held on 23.10.2005 was postponed by the District Collector on the ground that he is seeking clarification from the Registrar, Cooperative Societies in regard to the objection raised by respondent No.4. The appellant challenged the action of the District Collector in writ petition No.23135 of 2005. He also filed WPMP No.29682 of 2005 for being allowed to contest the election. By an order dated 27.10.2005, the learned Single Judge directed that the elections should go on, but result shall not be declared. WVMP No.3054 of 2005 filed by respondent No.4 for vacating of order was dismissed by the learned Single Judge and the interim order was made absolute. Thereafter, elections were held on 5.11.2005. The appellant is one of the persons who secured highest number of votes and thereby became eligible to be declared as elected. The writ petition was disposed of on 8.12.2005.

In the meanwhile, Deputy Registrar, Cooperative Societies, Kavali, passed order dated 9.11.2005 disqualifying the appellant from continuing as member of the managing committee, which the officer did by invoking the provisions of Section 21-A(1A) of the Andhra Pradesh Cooperative Societies Act.

The appellant challenged order dated 9.11.2005 on various grounds including the one that the Deputy Registrar did not have the power to disqualify him from contesting election to the society and the only remedy available against his election was by raising an election dispute under Section 61(3) of the Act read with Rule 49-B of the Andhra Pradesh Cooperative Society Rules, 1964.

The learned Judge rejected the appellant's challenge to order dated 9.11.2005. He held that even though the remedy available to respondent No.4 was to file a petition under Section 61(3) of the Act, order dated 9.11.2005 can be treated as one passed under the second part of Section 21-A(1A). The learned Single Judge then proceeded to consider whether the appellant had been given proper notice before passing order dated 9.11.2005 and held that such notice had not been given. Accordingly, he quashed the order and directed the respondents to treat the same as show-cause notice and pass appropriate order under Section 21-A(1A) after giving reasonable opportunity to the appellant.

Learned counsel for the appellant made efforts to persuade us to hold that the challenge thrown to his election by respondent No.4 could not have been decided except by way of Election petition under Section 61(3) of the Act read with Rule 49B of the Rules, but, we have not felt persuaded to agree with him.

A reading of Section 21-A(1A) makes it clear that a person having more than two children is disqualified for election or for continuing as a member of the committee. The second part of the section makes it clear that even if a person has been elected as member of the committee and he incurs disqualification enumerated under Section 21A, the competent authority can discontinue his membership of the committee. This provision was invoked by Deputy Registrar of Cooperative Societies for passing order dated 9.11.2005. Therefore, it is not possible to agree with the learned counsel that the action initiated by the officer concerned is vitiated due to lack of jurisdiction.

No other point has been argued.

In the result, the appeal is dismissed. However, it is made clear that observation contained in order dated 29.11.2005 passed by the learned Single Judge in writ petition No.25418 of 2005 and dismissal of this appeal shall not in any manner prejudice the cause of the appellant and he shall be free to raise all legally permissible objections to the action proposed to be taken under Section 21A(1A) of the Act.

G.S.SINGHVI, C.J.

16.12.2005.

C.Y.SOMAYAJULU, J.

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